

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/05/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

K. Schrameck
Deputy

CV 2001-011547

FILED: 10-10-01

EPIC RESORTS L L C

ALAN B KAUFMAN

v.

CITY OF SCOTTSDALE, et al.

DEBORAH M ROBBERSON

JEFFREY D GROSS

MINUTE ENTRY

On October 3, 2001, this Court took under advisement the issues presented in Defendant Walton's Motion to Dismiss. This Court has considered the excellent pleadings submitted by the parties and the oral argument of counsel.

All defendants have moved this Court to dismiss this action on the basis of a lack of standing by Epic Resorts to seek a review of an interpretation by the City of Scottsdale Board of Adjustment regarding the zoning stipulation which applies only to Defendant Walton's property. This Court has concluded that the Defendants are correct and that the Motion to Dismiss is appropriate.

Defendant Walton owns 12.3 acres of property near Bell and Pima Roads within the City of Scottsdale. Located on this property is a Marriott Hotel and an additional 2.1 acres designated for future expansion. As part of a previous re-zoning procedure involving the Walton property, Walton and the City of Scottsdale entered into a stipulation concerning Walton's property. The Scottsdale Board of Adjustment was requested to interpret this zoning stipulation and issue an

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opinion of whether the stipulation applied to the Marriott Hotel parcel, to the future expansion parcel, or both. The Scottsdale Zoning Administrator determined that the re-zoning stipulation between Walton and the City of Scottsdale applied to the entire property including the future expansion parcel. Walton appealed the Zoning Administrator's decision to the Board of Adjustment, and on June 6, 2001 the Scottsdale Board of Adjustment reversed the Zoning Administrator's decision. The Scottsdale Board of Adjustment ruled that the re-zoning stipulation between Walton and the City of Scottsdale only applied to the Marriott Hotel parcel of the Walton property and did not apply to the future expansion parcel of the Walton property. The future expansion parcel is vacant and if Defendant Walton or any of Walton's successors wish to develop this future expansion parcel, Walton must follow the City of Scottsdale's procedures as set forth in their zoning ordinances, including development and site plan approval in public hearing processes. Development of this parcel is speculative at this point.

A.R.S. Section 9-462.06 (K) requires that only a person "aggrieved" by a decision of a Board or "affected" by a decision of a Board may file a complaint for special action pursuant to that statute. Defendants have characterized this portion of the statute as requiring that the Petitioner, Epic Resorts, must have "standing" to seek review under that statute.

The Arizona Supreme Court has explained that the question of standing in Arizona is "not a constitutional mandate since we have no counterpart to the case or controversy requirement of the Federal Constitution (citations omitted)."¹ The question of standing is a question of judicial restraint. In Armory Park, the Arizona Supreme Court explained:

We impose that restraint to insure that our courts not issue mere advisory opinions, that the case is not moot and that the

¹ Armory Park v. Episcopal Community Services, 148 Ariz. 1, 6, 712 P2d 914,919(1985).

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issues will be fully developed by true adversaries. Our Court of Appeals has explained that these considerations require at a minimum each party possessing interest in the outcome (citation omitted).²

This Court notes that the initial inquiry by Epic Resorts to the Scottsdale Zoning Administrator was indeed a request for an advisory opinion, that is an interpretation of the Walton/City of Scottsdale Zoning Stipulation. More importantly, Epic Resorts is not able to demonstrate that it is damaged or affected in any way by the City of Scottsdale Board of Adjustment's ruling. The parcel at issue is undeveloped and it does not appear that any requests for re-zoning, construction, or development of the parcel has occurred or is threatening to occur.

For all of these reasons, this Court concludes that the Plaintiff, Epic Resorts, is not an aggrieved party, but that this action is simply a continuation of Epic Resorts request for advisory rulings without a true case or controversy. The concept of judicial restraint requires that this Court grant Defendants' Motion to Dismiss. IT IS ORDERED granting Defendants' Motion to Dismiss.

² Id.